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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Cung Le, Nathan Quarry, Jon Fitch, Brandon
Vera, Luis Javier Vazquez, and Kyle Kingsbury,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

Defendant.

Case No. 2:15-cv-01045-RFB-BNW

**PLAINTIFFS' MOTIONS IN LIMINE NOS. 13
TO 17 TO EXCLUDE UNFAIRLY
PREJUDICIAL, IRRELEVANT, OR
UNSUBSTANTIATED EVIDENCE OR
TESTIMONY RELATING TO ZUFFA OR
THE UFC**

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I. MOTION IN LIMINE NO. 13 TO EXCLUDE EVIDENCE OF ECONOMIC BENEFITS OR CHARITABLE CONTRIBUTIONS OF ZUFFA OR THE UFC TO THE LAS VEGAS COMMUNITY OR ANY OTHER GEOGRAPHIC REGION

Plaintiffs Cung Le, Jon Fitch, Brandon Vera, Luis Javier Vazquez, and Kyle Kingsbury (“Plaintiffs”) submit this Motion in Limine to exclude evidence of economic benefits or charitable contributions made by Zuffa or the UFC. Zuffa has already agreed to exclude reference to charitable contributions made by current or former Zuffa executives and employees, and Plaintiffs have agreed to exclude the same for themselves and their witnesses. But Zuffa has represented that it intends to introduce evidence of its charitable efforts as a company. Such evidence should be excluded; it has no probative value in this case, has the potential to prejudice and/or confuse the jury, and is also improper propensity evidence.

Zuffa’s charitable spending is not relevant to this case. At issue, instead, is whether Zuffa violated the antitrust laws by leveraging monopsony power to shut down competition and suppress fighter pay. To that end, Zuffa intends to exclude information relating to its executives’ spending of profits, and Plaintiffs have agreed that such individual spending is irrelevant. Corporate non-business-related spending by Zuffa isn’t relevant, either. Zuffa purportedly intends to present evidence of its charitable efforts to rebut Plaintiffs’ evidence of corporate waste on private jets and the like. But Plaintiffs seek to present that evidence not to put Zuffa in a bad light, but to rebut Zuffa’s intended argument that it did not have the funds to pay competitive wages to its fighters during the Class Period. Zuffa clearly did have such funds, as the evidence will show. Its corporate waste on private jets, as well as the extraordinary multi-hundred-million-dollar dividends to its three private shareholders are evidence of that. But Zuffa’s spending on charity is irrelevant because it is not responsive to the point to which Plaintiffs are submitting evidence of corporate expenditures and is otherwise inadmissible as set forth below. Zuffa’s charitable efforts have no probative value.

Courts routinely exclude this kind of evidence on relevance grounds. *E.g., Shenwick v. Twitter, Inc.*, No. 16-cv-05314, 2021 WL 1232451, at *6 (N.D. Cal. Mar. 31, 2021) (“Plaintiffs seek to exclude evidence or argument at trial regarding charitable contributions, philanthropy, or non-profit work by or on behalf of Twitter, the Individual Defendants, or any witness. The motion is granted. Evidence of

1 good acts is irrelevant to the question of whether the Twitter Defendants violated the securities laws or
 2 to the credibility of any witness.”); *United States ex rel. Kiro v. Jiaherb, Inc.*, No. CV 14-2484, 2019
 3 WL 2869186, at *4 (C.D. Cal. July 3, 2019) (“Relator’s MIL #7 requests that Defendant be precluded
 4 from introducing evidence regarding supposed ‘good acts,’ such as charitable contributions or
 5 community service performed by Defendant or its employees. The Court agrees and finds that any such
 6 evidence of ‘good acts’ is irrelevant to the alleged scheme of whether Defendant knowingly submitted
 7 false claims to CBP to receive lower duties.”); *Fitzhenry-Russell v. Keurig Dr. Pepper Inc.*, No. 17-cv-
 8 564, 2018 WL 10476581, at *2 (N.D. Cal. Dec. 10, 2018) (granting plaintiffs’ motion “to exclude
 9 evidence regarding Dr. Pepper’s ‘good corporate character’” because “Dr. Pepper’s good corporate
 10 character is irrelevant to whether its advertisements were misleading or false”). This Court should do
 11 the same here.

12 Evidence or argument by Zuffa that it has contributed to charity or economically benefitted the
 13 Las Vegas (or any other) region also presents an unacceptably high risk of biasing or confusing the
 14 jury. Given the lack of probative value explained above, Rule 403 provides another ground to exclude
 15 the evidence. *See Universal Elecs., Inc. v. Universal Remote Control, Inc.*, No. SACV 12-329, 2014
 16 WL 8096334, at *6 (C.D. Cal. Apr. 21, 2014) (granting Plaintiffs’ Motion in Limine, which had argued
 17 that it would be “unfairly prejudicial under Rule 403” for Defendants to “elicit[] testimony about
 18 charitable donations by its CEO...or suggest[] that Plaintiff’s claim for patent infringement...has taken
 19 or will take money and time away from his charities”); *Oil-Dri Corp. of Am. v. Nestle Purina PetCare*
 20 *Co.*, No. 15 C 1067, 2019 WL 1098925, at *5 (N.D. Ill. Mar. 8, 2019) (excluding “testimony, other
 21 evidence, or argument” that defendant “is a ‘good company’ [or] ‘good corporate citizen’ because the
 22 “evidence is irrelevant...and even if arguably has some probative value, it is far outweighed by the
 23 likelihood of jury confusion and unfair prejudice to” the plaintiff). At bottom, the jury should decide
 24 this case based on application of antitrust law, not by “consider[ing] the impact their verdict might have
 25 on such” “charitable works,” “viewing the trial as a referendum on those activities,” or “on the basis of
 26 sympathy[.]” *In re 650 Fifth Ave. & Related Props.*, No. 08 CIV. 10934, 2017 WL 2214869, at *15–16
 27 (S.D.N.Y. May 18, 2017) (*rev’d on other grounds*).

1 Finally, to the extent Zuffa seeks to offer evidence of its charitable activity or positive
2 community impact as evidence that it is a “good corporate citizen,” it should additionally be barred by
3 prohibitions against character evidence. That is, “[e]vidence of a person’s character or character trait is
4 not admissible to prove that on a particular occasion the person acted in accordance with the character
5 trait.” Fed. R. Evid. 404(a)(1). This prohibition applies not only regarding individuals, but also
6 corporate entities. *E.g.*, *In re Bard IVC Filters Prod. Liab. Litig.*, No. CV-16-00474, 2018 WL 934795,
7 at *2 (D. Ariz. Feb. 15, 2018) (“Countering Plaintiffs’ punitive damages arguments does not mean,
8 however, that Defendants can present irrelevant evidence or try this case on the basis of corporate
9 character. *See* Fed. R. Evid. 404(a).”); *In re Tesla, Inc. Sec. Litig.*, No. 18-CV-04865-EMC, 2022 WL
10 17582008, at *16 (N.D. Cal. Dec. 7, 2022) (“Defendants acknowledge that character evidence such as
11 charitable acts is generally inadmissible.”); *In re: Tylenol (Acetaminophen) Mktg.*, No. 2436, 2016 WL
12 3125428, at *11 (E.D. Pa. June 3, 2016) (“Evidence of the defendants’ ‘good corporate character’ is not
13 admissible in the defendants’ case-in-chief under Rule 404(a). Evidence of the defendants’ charitable
14 work would have no probative value.”). Zuffa should not be permitted to put on irrelevant and
15 inadmissible evidence to place itself in a positive light.

16 For the foregoing reasons, the Court should exclude any evidence of charitable acts by Zuffa
17 and community economic benefit therefrom.
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II. MOTION IN LIMINE NO. 14 TO EXCLUDE SPECULATION BY LAY WITNESSES OR UNSUBSTANTIATED OPINIONS OF ZUFFA’S PROPOSED EXPERTS REGARDING THE FINANCIAL CONDITION OF PROMOTERS THAT ZUFFA ACQUIRED BETWEEN 2006 AND 2011

Zuffa’s lay witnesses should be precluded from offering either fact or opinion testimony not based on personal knowledge regarding the financial condition of MMA promoters Zuffa acquired between 2006 and 2011. Even if Zuffa witnesses have personal knowledge of the general financial condition of a promotion, they should be precluded from testifying about the source of any alleged financial difficulties on the basis of speculation or hearsay. Zuffa’s expert witnesses should similarly be precluded from offering such testimony to the extent that it is based on inadmissible evidence and does not inform their expert analysis or opinions. Finally, to the extent that Zuffa is unable to produce admissible evidence for the supposedly poor financial condition of each of these acquired entities, Zuffa witnesses should be precluded from referring to the promotions as a group as “failing” or “going out of business.”

Rule 602 requires that witnesses have “knowledge produced by the direct involvement of the senses” in order to testify on a given matter. *United States v. Lopez*, 762 F.3d 852, 863-864 (9th Cir. 2014). Rule 701(a) similarly “contains a personal knowledge requirement” for lay opinion testimony. *See id.* at 864; *see also* Fed. R. Evid. 701 (“If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness’s perception . . .”). However, Zuffa’s witnesses have offered opinions about the financial condition of promotions Zuffa acquired without establishing sufficient basis for personal knowledge. *See, e.g., Exh. N*, Aug. 9, 2017 Deposition of Dana White, at 128:11-15 (“Q: How do you decide when to acquire a competitor of the UFC? A: Well, most of them – most of them were for sale. They were going out of business and they were for sale.”).¹ Indeed, they have sometimes admitted their opinions are pure speculation. *See, e.g.,*

¹ Exhibit citations are to the Declaration of Joseph Saveri attached hereto unless otherwise indicated.

1 **Exh. O**, Dec. 2, 2016 30(b)(6) Deposition of Lawrence Epstein, at 87:10-11 (“The business was failing
2 because they couldn’t manage it properly, *I assume*”) (emphasis added).²

3 Further, even where Zuffa witnesses have personal knowledge of the financial condition of a
4 promotion Zuffa acquired, they should not be permitted to speculate or relay hearsay about the source
5 of any alleged financial difficulties. The basis for specific evidence about certain promotions is hearsay.
6 For example, evidence that one of the promotions Zuffa acquired lost a television deal because of
7 reports that the promotion had ties to Japanese organized crime is based on media reports. *See, Exh. N*
8 at 153:3-9 (“A: Pride was—was a money laundering deal for the Yakuza. Q: How did you learn that
9 news? A: Because they got kicked off television in Japan because of it. Q: And that was reported in
10 early 2006? A: In Japan, yeah.”). Testimony by Zuffa witnesses about this alleged connection causing
11 Pride to lose a television deal is therefore two levels of hearsay. *See Larez v. City of Los Angeles*, 946
12 F.2d 630, 642-44 (9th Cir. 1991) (finding newspaper article inadmissible hearsay). Testimony that the
13 loss of this deal placed the promotion in dire financial straits is speculation.

14 Nor should Zuffa’s experts be permitted to parrot insufficiently supported or hearsay testimony
15 by Zuffa executives regarding these promoters’ financial condition. “Rule 703 generally allows experts
16 to rely on otherwise inadmissible evidence in formulating their opinions ‘if experts in the particular
17 field would reasonably rely on those kinds of facts or data in forming an opinion on the subject.’”
18 *Jensen v. EXC, Inc.*, 82 F.4th 835, 847 (9th Cir. 2023) (quoting Fed. R. Evid. 703) (brackets omitted).
19 However, an expert may not use inadmissible evidence “as general proof of the truth of the underlying
20 matter.” *Paddack v. Dave Christensen, Inc.*, 745 F.2d 1254, 1262 (9th Cir. 1984) (quotations omitted).
21 Here, Dr. Topel opined that Pride, Affliction, and Strikeforce were “failing competitors” of Zuffa’s,
22 citing, *inter alia*, the depositions of Zuffa executives. **Exh. F** at 33-34 (attached to the Declaration of
23 Joseph Saveri in Support of Plaintiffs’ Motions in Limine Nos. 4-7). Other than characterizing the
24 promotions as failing, Dr. Topel did not offer any opinion or use his expertise in any way to perform
25

26 ² As a witness testifying under Rule 30(b)(6), Mr. Epstein’s testimony is not constrained by his
27 personal knowledge, but by the information “reasonably known by the responding entity.” *Great Am.*
28 *Ins. Co. of N.Y. v. Cegas Const. Co., Inc.*, 251 F.R.D. 534, 539 (D. Nev. 2008) (quotations omitted).
Nevertheless, he is not permitted to merely speculate about the promoters’ financial conditions.

1 analysis on the basis of these statements. Accordingly, to the extent that the testimony underlying the
2 opinion is inadmissible, Dr. Topel should not be permitted to repeat inadmissible statements solely
3 because of his purported expert status. In any event, Dr. Topel is an economist, not a business valuation
4 expert.

5 As Zuffa has not set forth admissible evidence that each of these promotions was in poor
6 financial condition, its witnesses should be precluded from referring to the promotions as a group as
7 “failing” or “going out of business.” Zuffa plans to suggest that these promotions were on the verge of
8 leaving the marketplace in order to counter Plaintiffs’ properly admissible evidence—including from
9 Zuffa’s own files and witnesses—demonstrating that Zuffa acquired these promotions to eliminate its
10 competition. For instance, an internal Zuffa memo shows that Zuffa acquired World Fighting Alliance
11 as “a defensive strategy to eliminate a second tier competitive brand operating in the Las Vegas
12 market.” **Exh. P**, Zuffa, LLC Intangible Asset Treatment Discussion Memo, at 7. Regarding Zuffa’s
13 acquisition of Pride, Zuffa’s outside counsel Thomas Paschall noted “[g]iven the strategic/preemptive
14 nature of this acquisition (ie to stop others from buying it) and your having seriously contemplated
15 acquiring them only to shut down their business and utilize their fighters in the UFC, we set a low
16 threshold of due diligence before the deal became binding on both sides.” **Exh. Q**, Jan. 31, 2007
17 Paschall Email, at 1. After Zuffa acquired Affliction, UFC’s Assistant General Counsel Michael Mersch
18 wrote in an email that “[o]ur main rival is done.” **Exh. R**, July 24, 2009 Mersch Email. If Zuffa is
19 permitted to elide its lack of proof as to individual promoters by making general statements that all of
20 the promotions it acquired were failing, Plaintiffs will be unfairly prejudiced.

III. MOTION IN LIMINE NO. 15 TO EXCLUDE EVIDENCE OF OR REFERENCE TO ZUFFA OR UFC SERVING AS A BUSINESS SCHOOL CASE STUDY, INCLUDING WITHOUT LIMITATION EVIDENCE RELATING TO PROPOSED DX-794

Defendant Zuffa’s proposed trial exhibit DX-0794 (**Exh. S**) is an email to Zuffa CEO, Lorenzo Fertitta, forwarding a draft mock-up of a proposed curriculum to teach a Harvard Business School (HBS) case study on UFC about UFC’s history, regulatory challenges, and revenue and attendance data on MMA events from the 1990s and 2000s. The document is dated July 9, 2011 and does not appear to have ever been published.

The bases on which Plaintiffs seek to exclude evidence of or any reference relating to this document include that it (1) is irrelevant to any issue the jury will decide, (2) constitutes impermissible expert material, (3) will unduly prejudice Plaintiffs by misleading the jury if permitted, and (4) is inherently unreliable given numerous other insurmountable evidentiary issues, including multiple levels of hearsay, incompleteness, and authentication problems.

The touchstone of admissibility is relevance, and evidence is relevant if it “has any tendency to make a fact more or less probable than it would be without the evidence.” Fed. R. Evid. 401 & 402. Even if evidence could qualify as relevant under Federal Rule of Evidence 401, it will be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403. Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision by the jury on an improper basis. *Tennison v. Circus Circus Enters., Inc.*, 244 F.3d 684, 690 (9th Cir. 2001).

HBS’s opinions or analyses on UFC’s business model are not germane to the case. This exhibit—which is in draft form, with comment bubbles, and a unilaterally withheld page labeled as “non-responsive”—has no tendency to make any fact in dispute more or less probable. Fed. R. Evid. 401. What a professor at Harvard appears to think or believe, based on an unknown and untested level of knowledge or study, about the UFC is wholly irrelevant to the claims or defenses at issue for trial.

Indeed, such evidence should be excluded as an attempt to present the jury with expert material under the guise of lay witness evidence. Federal Rule of Evidence 701 bars fact witnesses from offering

1 opinion testimony unless it is “(a) rationally based on the witness’s perception, (b) helpful to clearly
 2 understanding the witness’s testimony or to determining a fact in issue, and (c) not based on scientific,
 3 technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701. Rule 701
 4 safeguards against improper introduction of expert testimony and material. *See* Fed. R. Evid. 701
 5 advisory committee notes to 2000 amendment. (“[T]he distinction between lay and expert witness
 6 testimony is that lay testimony results from a process of reasoning familiar in everyday life, while
 7 expert testimony results from a process of reasoning which can be mastered only by specialists in the
 8 field.”) (quotation marks and citations omitted). The advanced process of reasoning required to be
 9 qualified as an expert carries with it an indicium of reliability. Indeed, for this reason expert witnesses
 10 enjoy “testimonial latitude unavailable to other witnesses on the assumption that the expert’s opinion
 11 will have a reliable basis in the knowledge and experience of his discipline.” *Kumho Tire Co., Ltd. v.*
 12 *Carmichael*, 526 U.S. 137, 138 (1999).

13 The evidence at issue qualifies as technical or other specialized knowledge within the scope of
 14 Rule 702 because it sets forth data and tables purportedly created by unidentified “casewriters.” But
 15 these anonymous authors are not experts in this case, have not had access to the record in this case, and
 16 Plaintiffs have had no opportunity to vet the data proffered or investigate the sources thereof, let alone
 17 test any of the methodologies employed through cross-examination or pose any necessary rebuttals.
 18 Indeed, because much of the record of the UFC’s alleged misconduct in this case was under seal for
 19 most of the length of this case, the authors of the HBS document would not have had access to the full
 20 range of materials to provide a balanced analysis of the UFC’s growth and development. Zuffa is
 21 attempting to circumvent the Federal Rules of Evidence to impermissibly include expert material
 22 without going through the necessary safeguards designed to shield the jury from precisely such
 23 unexamined material. *See Olinger v. U.S. Golf Ass’n*, 52 F. Supp. 2d 947, 950 (N.D. Ind. 1999)
 24 (granting motion in limine to exclude proposed expert testimony where expert “employ[ed] an
 25 undisclosed methodology to arrive at undisclosed opinions”).

26 Zuffa has not identified a witness on its witness list that could try to lay a foundation for any
 27 substantive aspect of this document, expert or otherwise. Presumably, the only foundational testimony
 28

1 Zuffa could offer would be from Mr. Fertitta testifying to the fact of receipt of this authorization—
 2 testimony which has zero probative value. And Mr. Fertitta is certainly not qualified as an expert to
 3 testify as to the methodologies and conclusions contained in the document. *See Ely v. Cnty. of Santa*
 4 *Barbara*, No- CV 20-6549, 2022 WL 18356630, at *7 (C.D. Cal. July 25, 2022) (“[a lay witness]
 5 cannot assume the role of the expert herself or speculate as to what an expert might conclude”). On the
 6 other hand, such testimony could pose a risk that jurors, based on Harvard’s sheer name recognition,
 7 would draw improper inferences that Zuffa’s conduct was above-board or positive. Allowing such
 8 evidence would cause the jury to draw “perfectly logical—though mistaken—inferences.” *United*
 9 *States v. Lawrence*, 189 F.3d 838, 843 (9th Cir. 1999).

10 Moreover, this evidence includes information dating back to 1993 that falls well within the
 11 ambit of Plaintiffs’ Motion in Limine No. 18. MIL 18 seeks to exclude the introduction of any material
 12 at trial that is dated before 2005 and that Zuffa refused to produce in discovery—including a
 13 “smorgasbord” of hardcopy materials Zuffa represented to the Court were identified but that it would
 14 not review in detail—after taking the position that such material was irrelevant and not probative. *See*
 15 *Tr. of Nov. 17, 2015 Hearing at 11:2-12:10*. As set forth in that MIL, Zuffa ultimately agreed only to
 16 produce fighter contracts, correspondence files for fighters in the Class, and some sponsorship and
 17 venue material, while denying Plaintiffs material that likely falls squarely on the topics actually
 18 addressed in the case study draft—including regulatory history of UFC, the purchase of UFC, and
 19 revenue in the early 2000s. It would be highly prejudicial to allow Defendant to have its witnesses
 20 testify to in relation to events, conduct and facts relying on such data and information. The disputed
 21 exhibit thus circumvents the issues in PMIL No. 18 as well.

22 The risk of prejudice and jury confusion is so high, with the probative value so low, that both
 23 DX-794 and any other irrelevant evidence, argument, or testimony about UFC being a case study for
 24 business schools should be excluded under Rules 401, 403, and 701.

1 **IV. MOTION IN LIMINE NO. 16 TO EXCLUDE UFC VIDEO CLIPS THAT ARE (1)**
 2 **HEARSAY; (2) UNAUTHENTICATED; (3) LACK SPONSORING WITNESSES, (4)**
 3 **WERE NOT PRODUCED IN DISCOVERY, (5) ARE SUBJECT TO EXCLUSION**
 4 **BASED ON OTHER MOTIONS IN LIMINE; AND, (6) NOT RELEVANT TO ANY**
 5 **CLAIM OR DEFENSE IN THIS LITIGATION**

6 Plaintiffs seek to exclude eighty-five (85) video and audio files (the “Clips”) that Zuffa has
 7 included on its exhibit list, totaling over *nine hours* of runtime. Specifically, Zuffa’s trial exhibit list,
 8 exchanged with Plaintiffs on February 8, 2024, contains 84 video clips and 1 audio clip that are all
 9 inadmissible under the Federal Rules of Evidence for the reasons set forth below. A chart containing all
 10 85 of the video and audio exhibits is attached hereto as **Exhibit Z-1**.

11 First, all eighty-five of the Clips are hearsay and should be excluded under Fed. R. Evid. 802.
 12 None of these Clips meet the standard for an exception to the hearsay bar under the Federal Rules of
 13 Evidence. Many of these Clips are mere puff pieces that Zuffa put together that meet no exception to
 14 the Federal Rules’ bar of hearsay. *See id.*, e.g., DX-0111 (a 45-minute puff piece Zuffa produced on
 15 Zuffa’s origin and expansion to United Arab Emirates featuring out-of-court statements by numerous
 16 non-witnesses and Zuffa’s executives); DX-0112 (similar 15-minute puff piece on UFC’s expansion to
 17 United Arab Emirates); DX-0113 (similar 27-minute puff piece on the UFC’s business and history,
 18 featuring the owners of Zuffa); DX-0565 (1.5 minute advertisement for UFC as a company). Other
 19 Clips contain graphics and written statements of purported facts and vague assertions, often without
 20 any citation or basis. *E.g.*, DX-0564 (including statements like “**THE FASTEST GROWING**
 21 **SPORTS ORGANIZATION IN HISTORY,**” “**MMA IS SECOND ONLY TO SOCCER IN**
 22 **WORLD APPEAL,**” and “**UFC IS THE LARGEST PAY PER VIEW EVENT PROVIDER IN THE**
 23 **WORLD**” (emphasis in original)); DX-0735 (“**OVER 260,000,000 FANS GLOBALLY,**”
 24 “**YOUNGEST FAN BASE AMONG MAJOR SPORTS,**” and “**ONE OF THE LONGEST RUNNING**
 25 **REALITY TV PROGRAMS**”). On the whole, all of these Clips are hearsay and none meet an
 26 exception to the hearsay bar under Fed. R. Evid. 802 and thus all should be excluded.

27 Second, none of the Clips were authenticated and no foundation has been laid. The identity of
 28 who created the Clips, when, for what purpose, etc. has not been provided in the record for nearly all of

the Clips.³ Indeed, some of these Clips have narrators who are not identified in the Clip making objectionable commentary without any foundation whatsoever. Zuffa has not disclosed who created the Clips, who the narrators are, and other key information for authentication purposes. Additional Clips do not appear to have been created by Zuffa at all. **Exhibit Z-2** lists fifteen (15) Clips that do not appear to have been created by Zuffa.⁴ All of these Clips, including but not limited to the fifteen Zuffa did not create, should thus also be excluded pursuant to Fed. R. Evid. 901.

Third, relatedly, there is no sponsoring witness for these Clips, making exclusion proper under Fed. R. Evid. 602. Similarly, many of these videos feature individuals who are not on the parties' witness lists. **Exhibit Z-3** lists fifty-six (56) Clips that feature individuals who are not on the parties' witness lists. Absent the proper witnesses to sponsor the portions of the Clips featuring the witnesses, the Clips cannot be properly introduced and should be excluded. Other Clips feature individuals who are subject to another of Plaintiffs' MILs because Zuffa did not timely disclose the witnesses. *See Exh. Z-4* (listing twenty-five (25) Clips featuring fighters subject to Plaintiffs' Motion in Limine No. 1).⁵ To the extent the Court grants all or part of the motion in limine concerning those late-disclosed witnesses, the Clips featuring those excluded witnesses would also lack a sponsoring witness, and the Court should exclude those Clips as well. On the whole, all fifty-six exhibits featuring individuals not listed on the exhibit list and the twenty-five Clips featuring individuals that should be stricken from Zuffa's witness list should be excluded for lack of a sponsoring witness.

³ In limited circumstances, some of that information has been provided. For example, DX-0111 contains credits at the end of the puff piece which provides some information about who may have been involved in creating that Clip, but none of those involved is on Zuffa's witness list, nor do the credits meet appropriate standards to ensure accuracy or trustworthiness.

⁴ Because Zuffa has not supplied information sufficient to determine who created the Clips, it is not clear whether other of the Clips not listed in Exhibit B also suffer this defect.

⁵ A limited number of Clips feature some combination of individuals not on a witness list, a late-disclosed witness subject to Plaintiffs' Motion in Limine No. 1, and/or a witness on a party's witness list. All of such Clips are hearsay and lack authentication and should be excluded on those grounds (and others in this Motion to the extent such other grounds apply). The portions of such Clips that lack a proper sponsoring witness, *i.e.*, because they do not include an individual properly on a party's witness list should also be excluded for lack of a proper sponsoring witness even where other portions of the Clips could have a sponsoring witness.

Fourth, thirty-seven (37) of the Clips were not produced in discovery in this case. Specifically, eighteen (18) of the Clips were only produced in discovery in *Johnson v. Zuffa, LLC*, No. 21-cv-1189 (D. Nev.). See **Exh. Z-5** (listing the Clips produced only in *Johnson*). The Court explicitly rejected Zuffa's effort to smuggle discovery from *Johnson* into the *Le* trial. See ECF No. 922. Another nineteen (19) of the Clips were not produced in discovery at all. See **Exh. Z-6** (listing the Clips not produced in discovery in either *Johnson* or *Le*). Of course, by not producing them at all, Zuffa cannot circumvent the Court's denial of Zuffa's effort to import *Johnson* discovery into this *Le* trial. None of these thirty-seven late Clips was provided to Plaintiffs prior to 2024, and the nineteen most recently produced Clips were not provided until mid-February 2024, just two months before trial. Zuffa has offered no excuse for not having produced these Clips. Indeed, one of the UFC-created Clips feature a named Plaintiff (DX-0810), and thus should have been produced in response to Plaintiffs' Request for Production of Documents No. 43, which sought "All Documents discussing or relating to Plaintiffs..." See **Exh. A** to Plaintiffs' MIL No. 1, at 30. Defendant cannot withhold Clips featuring Plaintiffs from discovery in *Le* and then use those Clips at trial. In any event, Courts in the Ninth Circuit routinely grant motions in limine to exclude witnesses or evidence that was not disclosed or produced during discovery. See, e.g., *Cornell v. Wal-Mart Stores, Inc.*, 2010 WL 11591395, at *7 (D. Nev. Jan. 26, 2010) (quoting Fed. R. Civ. P. 37(c)(1)) (granting MIL to exclude evidence and witnesses not disclosed during discovery); *Bob Barker Co. v. Ferguson Safety Prod., Inc.*, 2007 WL 4554012, at *1 (N.D. Cal. Dec. 4, 2007) (same); *Viasphere Int'l, Inc. v. Vardanyan*, 2014 WL 12709000, at *1 (N.D. Cal. Feb. 24, 2014) (same); *Zeen v. Cnty. of Sonoma*, 2018 WL 3769867, at *3 (N.D. Cal. Aug. 9, 2018) (same). The Court should exclude these thirty-seven Clips as untimely produced and identified.

Fifth, certain of the Clips concern matters that are objectionable due to other of Plaintiffs' motions in limine. For example, **Exh. Z-7** lists three puff pieces describing matters taking place prior to 2005 on which Zuffa did not participate in discovery. These Clips are thus excludable under the reasoning described in Plaintiffs' MIL No. 18. As noted above, twenty-five Clips feature individuals that Zuffa did not timely disclose and are therefore subject to Plaintiffs' MIL No. 1. See **Exh. Z-4**; PMIL No. 1. Still other Clips feature events and circumstances occurring after June 30, 2017, making

1 such Clips excludable pursuant to Plaintiffs' Motion in Limine No. 3. *See Exh. Z-8*. DX-0550 appears
2 to reflect charitable contributions that Plaintiffs' Motion in Limine No. 13 seeks to exclude. The Court
3 should exclude these Clips for the reasons stated in those motions in limine in addition to the bases
4 described here.

5 Sixth, none of the videos are relevant to any claim or defense in this litigation. For example, the
6 Clips include promotional videos (advertisements) for UFC events, (e.g., DX-0495, DX-0507), fighter
7 feature pieces (e.g., DX-0523, DX-0524), promotional advertisements for the UFC as a company (e.g.,
8 DX-0565 and DX-0566), an apparent advertisement for the UFC GYM and UFC FIT program (e.g.,
9 DX-0564), and a promotional video for a 5K run the UFC organized (DX-0569). *See Exh. Z-1*. These
10 Clips are not relevant to any claim or defense in this matter and should thus be excluded pursuant to
11 Fed. R. Evid. 401 and 402. Even to the extent these Clips have any probative value for Defendant's
12 defenses, the prejudice from these Clips outweighs whatever marginal relevance the Clips could have,
13 making such Clips excludable under Fed. R. Evid. 403.

14 For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion in
15 limine to exclude these Clips.

V. MOTION IN LIMINE NO. 17 TO EXCLUDE REFERENCE OR ARGUMENT ABOUT THE EFFECT OF A VERDICT IN THIS CASE ON THE LAS VEGAS COMMUNITY OR ANY OTHER GEOGRAPHIC REGION

Plaintiffs seek to exclude any evidence, reference to, or argument about any negative effects that a verdict for Plaintiffs would have on the Las Vegas community (or any other geographic region) by virtue of Zuffa’s economic impact because the effect of a verdict is not at issue—either for liability or for damages—and therefore is not properly before the jury in this case. Moreover, arguments as to verdict effects would be unduly speculative, and the potential for unfair prejudice substantially outweighs any (nonexistent) probative value.

The issue the jury will have to decide is whether Zuffa acted unlawfully and injured the class of fighters during the Class Period, which ended in June 2017. Any economic or social ramifications for a post-verdict future are speculative, years removed from the Class Period, and therefore irrelevant to this case. This is especially true because Plaintiffs are not seeking injunctive relief on behalf of this class.

Accordingly, evidence or argument regarding potential future effects has the potential to confuse the jury regarding the claims and time period at issue, as well as the relief requested. Further, speculative evidence of verdict effects has no probative value, and the risk of prejudice to Plaintiffs is substantial. That’s because “having the jury consider the impact their verdict might have on [community] activities...is not the proper basis for a verdict in this case.” *In re 650 Fifth Ave. & Related Properties*, No. 08 CIV. 10934, 2017 WL 2214869, at *15–16 (S.D.N.Y. May 18, 2017) (*rev’d on other grounds*).

Courts have widely acknowledged the inappropriateness of introducing information about verdict effects, including on the community at large. *E.g., In re Bard IVC Filters Prod. Liab. Litig.*, No. CV-16-00474, 2018 WL 934795, at *2 (D. Ariz. Feb. 15, 2018) (precluding defendants from “arguing at trial that a verdict against them will have an adverse impact on the medical community, future medical device research or costs, and the availability of medical care” in a products liability lawsuit); *Oyarzo v. Tuolumne Fire Dist.*, No. 1:11-CV-01271, 2013 WL 5718882, at *9 (E.D. Cal. Oct. 18, 2013) (granting a motion in limine “to preclude Defendants from any reference or mention of the effect that a verdict in favor of either Plaintiff could have on [a] public agency”); *Gonzalez v. Shahin*, No.

1 1:17-CV-157, 2021 WL 6693827, at *3 (D.N.D. Oct. 26, 2021) (“The Parties may not argue the effect
 2 of the verdict on either the quality of medical care in the community or healthcare costs.”); *Upky v.*
 3 *Lindsey*, No. CIV 13-0553, 2015 WL 3862944, at *22 (D.N.M. June 3, 2015) (granting a motion in
 4 limine in a medical negligence case where “each side agreed that neither side should discuss insurance
 5 or the effect that litigation has on healthcare availability”). Such arguments threaten to distract the jury
 6 from its proper role: serving as factfinder and applying antitrust law to those facts.

7 This concern is especially salient here because the jurors in this case will be selected from a
 8 pool of people who live and work in the Las Vegas region and may therefore feel personally invested in
 9 the area. *See Datatrans Corp. v. Wells Fargo & Co.*, No. 2:06-CV-72 DF, 2010 WL 11468934, at
 10 *15 (E.D. Tex. Oct. 5, 2010) (“Defendants shall not argue that a verdict for Plaintiff might have a
 11 negative impact on the nation's payment systems or the jurors' personal finances.”). If jurors are led to
 12 believe that a verdict against Zuffa will damage the Las Vegas economy or labor market, they may fear
 13 that they or their loved ones may experience negative fallout. Such improperly engendered reluctance
 14 would substantially prejudice Plaintiffs. *See Lacy v. McArdle*, No. 20-cv-1014, 2023 WL 4581759, at
 15 *6 (W.D. Wis. July 18, 2023) (“[T]here is no scenario in which it would be appropriate for either side
 16 to make an argument based on the effect that a verdict would have on the jurors or any nonparty.”).

17 Moreover, such testimony would be further misleading given that Zuffa is currently owned by
 18 TKO and ultimately, Endeavor. These companies are not located in Las Vegas, and likely would
 19 ultimately be responsible for paying all of part of any judgment in this matter.

20 For the foregoing reasons, this Court should exclude this argument and/or evidence from Zuffa,
 21 alongside the great number of courts that have held that “argument or evidence concerning the effect of
 22 the verdict are improper.” *Bunch v. Pac. Cycle, Inc.*, No. 4:13-CV-0036, 2015 WL 11622954, at *6
 23 (N.D. Ga. Apr. 27, 2015).

1 Dated: February 29, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of February, 2024 a true and correct copy of PLAINTIFFS' MOTIONS IN LIMINE NOS. 13 TO 17 TO EXCLUDE UNFAIRLY PREJUDICIAL, IRRELEVANT, OR UNSUBSTANTIATED EVIDENCE OR TESTIMONY RELATING TO ZUFFA OR THE UFC was served via the District Court of Nevada's ECF system to all counsel of record who have enrolled in this ECF system.

/s/ Joseph R. Saveri

Joseph R. Saveri